

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT



SENIOR STAFF ETHICS TRAINING

110th CONGRESS

**Training for Members, Officers, and
Senior Staff
Rules and Standards on Outside
Activities and Income**



*Presentation by the Staff of the Committee on
Standards of Official Conduct
U.S. House of Representatives
110th Congress*

Topics

- Outside Earned Income Limit
- Restrictions on Outside Employment
- Honoraria Ban
- Conflicts of Interest
- Post-employment Restrictions

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Outside Earned Income Limit

***Who is Covered – Members and
“Senior Staff”***

**All Members as well as officers and
employees who earn \$111,675 or more
for at least 90 days in 2007**

Limit for 2007:

\$25,200

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Restrictions on Outside Employment

For Members and senior staff:

- ✗ No compensation for professional services involving a fiduciary relationship
- ✗ No compensation for affiliating with an organization providing such services
- ✗ No paid service as an officer or board member

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Services Covered Under the Restriction Include:

- Legal
- Real Estate
- "Consulting and Advising"
- Insurance
- Medicine
- Financial

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Honoraria Ban

What is an Honorarium?

Payment or thing of value for an appearance, speech, or article
(or a series of appearances, speeches, or articles)

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Charitable Contributions Permitted

- In lieu of an honorarium, event sponsor may donate up to \$2,000 directly to charity
- Report payment on Financial Disclosure Statement

In addition, certain exemptions to the ban may apply

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Teaching

No paid teaching without prior, written Committee approval

- In order to receive approval, the teaching must conform to certain criteria
- Teaching compensation is *subject* to outside earned income limit

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Publishing

No copyright royalties without prior, written Committee approval

- No advance on royalties
- Publishing agreement must be on "usual and customary" terms from an established publisher
- Royalties are considered *unearned* income

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Outside Activity Considerations

In addition to the restrictions on outside income and employment:

- must observe certain additional ethical considerations regarding paid *and* unpaid outside positions

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Conflicts of Interest

- Outside activities *may not* conflict with official duties
- Official position and confidential information *may not* be used for personal gain
- You *may not* dispense "special favors" to an outside group or employer
- Perform outside activities on your "own time"
- Receive *approval* from supervising Member

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Criminal Conflicts of Interest

- 18 U.S.C. § 203 – Members, officers, and employees may not solicit or receive compensation for representation in a matter in which U.S. is a party or has an interest
- 18 U.S.C. § 205 – Even absent compensation, officers and employees may not represent others before the U.S., or prosecute a claim in a covered matter

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Additional Considerations

- If performing an official act would affect an outside group or employer:
 - *Inform your supervisor*
 - Consider whether it is necessary for you to *recuse* from the official action
- **No lobbying**
 - Including no behind-the-scenes advice

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Financial Interests

No prohibition on holding any particular investment or financial interest, *but* . . .

- Members and senior staff must *disclose* certain assets on the annual Financial Disclosure Statement
- *Do not* take any official action that would have an effect on your pecuniary interests

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Members' Financial Interests

- **Voting**
- **Earmark Certification**
- **Government Contracts**

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Staff Financial Interests

House Rule 23, clause 12: Absent a waiver, senior staff may not contact a federal agency in a non-legislative matter in which the employee has "a significant financial interest"

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Post-Employment Restrictions

Who is Covered – Members, Officers, and "Very Senior Staff"

In addition to Members and officers, those staff who in the one year before leaving were paid \$123,900 or more for at least 60 days

A violation of one of the following prohibitions is a felony under 18 U.S.C. § 207...

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Members and Officers

May not communicate with or appear before a Member, officer, or employee of House or Senate with intent to influence official action on behalf of anyone else for one year after leaving office

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Very Senior Staff

- *May not* communicate with or appear before the individual's former employer or office for one year
- Different restrictions apply depending on whether you were employed by:
 - personal office
 - committee office
 - leadership

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Foreign Governments

Among other things, no covered individual may:

Represent or advise a foreign government or foreign political party, or provide behind-the-scenes advice, for one year

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Other Considerations . . .

- ✓ Gift Rule
- ✓ Use of Official Resource Restrictions
- ✓ Solicitation Guidelines
- ✓ Rules Concerning Outside Work by Family Members

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Call or Write Before Acting:

Committee on Standards of Official Conduct
Suite HT-2, The Capitol
Washington, DC 20515
(202) 225-7103 (office)
(202) 225-7392 (fax)
www.house.gov/ethics

All communications are confidential

*Law states that no one is placed at risk by seeking
Committee advice about future conduct*

*Good faith reliance on written Committee opinions
protects you from sanctions under House rules*

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U.S. House of Representatives

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

Washington, DC 20515

September 29, 2006

MEMORANDUM FOR ALL EMPLOYEES

FROM: Committee on Standards of Official Conduct
Doc Hastings, Chairman *Doc*
Howard L. Berman, Ranking Minority Member

SUBJECT: Post-Employment and Related Restrictions for Staff *HKB*

The purpose of this memorandum is to acquaint you with key issues of concern to staff members who are departing from the House of Representatives or one of the legislative branch offices.¹ The matters discussed here include negotiating for future employment, the post-employment restrictions, financial disclosure requirements (termination reports), and outside employment and earned income restrictions. Although this memorandum will be of particular interest to departing staff, current staff (and their employing Members) should also familiarize themselves with these restrictions, especially the criminal restrictions on post-employment contacts that have been the subject of recent attention by the United States Department of Justice. The most critical points may be summarized as follows:

Departing staff may not allow the prospect of future employment to affect their official actions.

A staff person departing at year-end who was paid at or above an annual rate of \$123,900 for 60 days or more during 2006 may not:

- for one year after leaving employment, communicate with or appear before his or her former employing Member, committee or office on official business, as detailed below; or
- represent, aid, or advise a foreign government or foreign political party with the intent of influencing any Federal official for one year after leaving employment.

¹ The terms "staff," "staff person," and "employee" are used interchangeably throughout memorandum to refer to persons who are employed by a Member, committee, leadership office or other legislative office (see note 15 below). Relevant distinctions among these categories of employees are noted as necessary. The Committee has available a separate memorandum addressing a similar range of issues pertinent to departing Members and officers of the House.

A departing staff member who has been filing financial disclosure statements because of his or her rate of pay must:

- file a termination financial disclosure statement within 30 days of leaving the Government payroll, unless the Standards Committee grants an extension of the due date.

More detailed guidance follows. We encourage you to write the Committee or to call the Committee's Office of Advice and Education (extension 5-7103) for guidance addressed to your specific circumstances.

NEGOTIATING FOR FUTURE EMPLOYMENT

An employee is free to pursue future employment contemporaneous with the employee's service in the House, subject, however, to certain ethical constraints. First and foremost, it would be improper for an employee to permit the prospect of future employment to influence the employee's official actions. An employee may determine to use an agent (a "headhunter") to solicit job offers on the employee's behalf in order to avoid any improper appearances, although this is not necessary, provided the following generally applicable principles are observed.

The House Code of Official Conduct prohibits House Members, officers and employees from receiving compensation "by virtue of influence improperly exerted" from a congressional position.² The Code of Ethics for Government Service (§ 5) forbids anyone in Government service from accepting "favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance" of governmental duties. Federal criminal law prohibits a federal official from soliciting or accepting a "bribe" – i.e., anything of value given in exchange for being influenced in an official act.³ Although bribery necessarily entails a *quid pro quo* arrangement, the same statute also bans seeking or accepting "illegal gratuities" – i.e., anything given because of, or in reward for, a future or past official act, whether or not the official action would be, or would have been, taken absent the reward.⁴

In light of these restrictions, an employee should be particularly careful in negotiating for future employment, especially when negotiating with anyone who could be substantially affected by the performance of official duties.⁵ It may be prudent for an

² House Rule 23, cl. 3.

³ 18 U.S.C. § 201(b)(2)(A).

⁴ *Id.* § 201(c)(1)(B).

⁵ Regarding the meaning of the term "negotiation" as used here, it is useful to consider court decisions that interpret a federal criminal statute barring Executive Branch employees from participating in matters affecting the

employee to have an exchange of correspondence with any serious negotiating partner, stipulating that the prospective employer (1) will receive no official favors in connection with the job negotiations and (2) understands that the employee, if paid at or above the salary threshold discussed in this memorandum, can neither contact the employee's former congressional office or committee on official business for a one-year period after leaving office, nor assist any foreign government in securing official action from any Federal official during that year.⁶

An employee who commences employment "negotiations" with an outside party as defined above – *i.e.*, there is "active interest on both sides" – or accepts employment from an outside party must either abstain from any official activity that would convey a particular benefit to that party, or disclose the negotiations or employment agreement to his or her employing Member. The focus here on legislation or other activity that would convey a "particular benefit" means that, for example, the fact that an employee is negotiating with a defense contractor ordinarily would not oblige the employee to abstain from working on the Defense Department appropriations. However, abstention or disclosure would be required with regard to legislation authorizing a particular aircraft where the employee is negotiating for or has accepted employment with a company that would manufacture that aircraft. Where, after disclosure of negotiations or agreement by an employee, a Member is considering allowing that employee to work on a matter that would convey a particular benefit to the potential or actual future employer, the Member should contact the Standards Committee for guidance.

Provided that an employee conducts himself or herself in accordance with the considerations discussed above, the employee may engage in negotiations for employment in the same manner as any other job applicant. Discussions may specifically address salary, duties, benefits, and other terms.

financial interests of an entity with which the employee is "negotiating or has any arrangement" concerning future employment (18 U.S.C. § 208). Those decisions have found that the term "negotiation" should be construed broadly. See, e.g., *United States v. Schaltenbrand*, 930 F.2d 1554, 1559 (11th Cir. 1991), *cert. denied*, 502 U.S. 1005 (1991) and *United States v. Conlon*, 628 F.2d 150, 155 (D.C. Cir. 1980), *cert. denied*, 454 U.S. 1149 (1982).

Nevertheless, negotiation is to be distinguished from "[p]reliminary or exploratory talks," inasmuch as the former connotes "a communication between two parties with a view toward reaching an agreement" and in which there is "active interest on both sides." *United States v. Hedges*, 912 F.2d 1397, 1403 n. 2 (11th Cir. 1990) (quoting jury instruction); see also *Schaltenbrand*, 930 F.2d at 1558, 1559 n. 2.

⁶ Former employees who are lawyers should consult their local bar association concerning the application of rules governing their involvement in matters in which they participated personally and substantially as employees. A former employee who joins a law firm should also be aware that a separate statutory provision, 18 U.S.C. §203, has been interpreted to prohibit a former Federal official who joins a firm from sharing in fees attributable to representational services in federally related matters where those services were provided by the firm while the individual was still employed by the Government. U.S. Office of Gov't Ethics Advisory Opinion 99 x 24 (Dec. 14, 1999) (available on the OGE website, www.usoge.gov).

Further, the House gift rule provides that a Member, officer or employee may accept “[f]ood, refreshments, lodging, transportation, and other benefits . . . customarily provided by a prospective employer in connection with bona fide employment discussions.”⁷ Thus, subject to the limitations set out in the rule, an employee may accept travel expenses from a negotiating partner to interview for a position and to meet prospective colleagues.

POST-EMPLOYMENT RESTRICTIONS

The Ethics Reform Act of 1989 enacted post-employment restrictions applicable to legislative branch officials. These limitations are part of the Federal Criminal Code (18 U.S.C. § 207(e), (f)), and they apply to Members and officers of the House, as well as to employees of House Member, committee and leadership offices who are paid at least 75% of a Member’s salary. The basic rate of pay for Members in calendar year 2006 is \$165,200, and thus the post-employment threshold for individuals who terminate their employment with a Member, committee or leadership office in 2006 is \$123,900.⁸ (The threshold rate for other years is available from the Standards Committee office.)

An employee is subject to these restrictions if the employee is paid at or above the threshold rate for at least 60 days during the one-year period preceding termination of the employee’s Government service.⁹ Accordingly, it is possible for an employee to become subject to the post-employment restrictions by the receipt of a “bonus” or merit adjustment that is paid in two or more months.

For covered individuals, the law establishes a one-year “cooling-off period” that is measured from the date of the individual’s departure from the Government payroll.¹⁰ House employees whose pay is below the threshold are not subject to the post-employment restrictions set out in the statute, and no other provision of Federal statutory law or the House Rules establishes any comparable restrictions on post-employment activity.

⁷ House Rule 25, cl. 5(a)(3)(G)(ii).

⁸ For employees of the other legislative branch offices (*see* note 15 below), the statute provides that the post-employment restrictions do not apply unless their rate of basic pay is equal to or greater than that payable for level 5 of the Senior Executive Service. 18 U.S.C. § 207(e)(6)(B). However, in 2004 the separate pay levels for SES employees were eliminated, and thus any employee who is departing from one of the other legislative branch offices should consult with the Committee on the applicable salary threshold.

⁹ 18 U.S.C. § 207(e)(6). With regard to House employees who are Federal civil service or military annuitants, it is the view of the Standards Committee that the post-employment restrictions apply to those whose combined House salary and annuity were at or above the threshold rate for the specified time period.

¹⁰ Where, after an individual’s services to the House have ceased, the office continues the individual on the payroll for the purpose of paying for accrued leave, the one-year cooling-off period will not begin until after the individual’s final day on the House payroll.

Set out below is a detailed description of prohibited and permitted post-employment activity by covered former employees under the statute. This explanation is followed by a table that briefly summarizes the statutory restrictions. Please note that the statute, as part of the Criminal Code, is enforced by the Justice Department, rather than by the Standards Committee, and Committee interpretations of the statute are not binding on the Department.

Prohibited Activity

Under the statute, a covered former employee may not, for a period of one year after leaving office:

- **Knowingly communicate with or appear before the employee's former employing office or committee**, with the intent to influence, on behalf of any other person, the official actions or decisions of a Member, officer or employee in such office or on such committee.¹¹ The statute excepts certain representations made on behalf of specific types of entities. These exceptions are described below in the context of "permissible activity." Specifically, the statute provides that:
 - Covered former employees on the **personal staff** of a Member may not seek official action, on behalf of other persons, from that Member or from any of the Member's employees.
 - Covered former **committee staff** may not seek official action, on behalf of other persons, from any current Member or employee of the employing committee or from any Member who was on the committee during the last year that the former employee worked there.¹² This restriction bars contacts with any of these individuals on any subject relating to official business, regardless of whether it pertains to matters within the committee's jurisdiction.
 - Covered former employees on the **leadership staff** may not seek official action, on behalf of other persons, from current Members of the leadership¹³ or any current leadership staff.¹⁴

¹¹ 18 U.S.C. § 207(e)(2)-(7).

¹² For the purposes of the statute, a detailee is deemed to be an employee of both the entity from which he or she comes and the House committee to which the individual is detailed (18 U.S.C. § 207(g)).

¹³ The "leadership" of the House of Representatives consists of the Speaker, majority leader, minority leader, majority whip, minority whip, chief deputy majority whip, chief deputy minority whip, chairman of the Democratic Steering Committee, chairman and vice chairman of the Democratic Caucus, chairman, vice chairman, and secretary of the Republican Conference, chairman of the Republican Research Committee, chairman of the Republican Policy Committee, and any similar position created after the statute took effect. 18 U.S.C. § 207(e)(7)(L).

- Covered former employees of any other legislative office may not seek official action, on behalf of other persons, from current officers and employees of that legislative office.¹⁵
- Knowingly represent a foreign government or foreign political party before any Federal official (including any Member of Congress) with the intent to influence a decision of such official in carrying out his or her official duties.¹⁶
- Knowingly aid or advise a foreign government or foreign political party with the intent to influence a decision of any Federal official (including any Member of Congress) in carrying out his or her official duties.¹⁷
- Use confidential information obtained by means of personal and substantial participation in trade or treaty negotiations within one year preceding his or her departure from office, in the course of representing, aiding, or advising anyone other than the United States regarding those negotiations.¹⁸

As to the prohibition against making any “communication to or appearance before” one’s former office, employees should be aware of the broad manner in which those terms have been defined under 18 U.S.C. § 207.¹⁹ A Justice Department opinion defines “communication” as “the act of imparting or transmitting information with the intent that the information be attributed to the former official.”²⁰ An advisory memorandum issued by the

¹⁴ In the opinion of the Standards Committee, an individual who was, at the time of termination of employment with the House, employed simultaneously by more than one House office is subject to the post-employment restrictions with respect to each of the individual’s employing offices, if the employee’s combined House salaries were at or above the threshold for at least 60 days during the one year prior to termination.

¹⁵ “[O]ther legislative offices” include the Architect of the Capitol, the United States Botanic Garden, the Library of Congress, the General Accounting Office, the Congressional Budget Office, the Government Printing Office, the Capitol Police, and the House Parliamentarian’s Office. See 18 U.S.C. § 207(e)(7)(G).

¹⁶ 18 U.S.C. § 207(f)(1)(A), (i)(1)(B). 18 U.S.C. § 207(f)(3) uses the same definitions of the terms foreign government and foreign political party as are found in the Foreign Agents Registration Act (22 U.S.C. § 611(e), (f)). These restrictions also apply with regard to any foreign commercial corporation that “exercises the functions of a sovereign.” See U.S. Office of Gov’t Ethics, *Summary of Post-Employment Restrictions of 18 U.S.C. § 207* at 11 (July 29, 2004) (available on the OGE website, www.usoge.gov, under the link for DAEOgrams). Also pertinent to these provisions of the statute is a U.S. Office of Legal Counsel opinion of June 22, 2004, the text of which is available under the same link on the OGE website (DAEOgram of Oct. 5, 2004), which concludes that 18 U.S.C. § 207(f) covers representational contacts with Members of Congress.

¹⁷ 18 U.S.C. § 207(f)(1)(B).

¹⁸ *Id.* § 207(b).

¹⁹ The provisions of 18 U.S.C. § 207 should not be confused with those of the Lobbying Disclosure Act (2 U.S.C. § 1601 *et seq.*), i.e., merely because a particular activity does not constitute “lobbying” for purposes of that Act does not mean that the activity is permissible under 18 U.S.C. § 207.

²⁰ U.S. Office of Legal Counsel, “Communications” under 18 U.S.C. § 207 at 3 (Jan. 19, 2001) (available on the OLC website, www.usdoj.gov/olc, under the link for memoranda/opinions. In that opinion, the Office of Legal

U.S. Office of Government Ethics for Executive Branch employees states, "An 'appearance' extends to a former employee's mere physical presence at a proceeding when the circumstances make it clear that his attendance is intended to influence the United States."²¹ The provision is broad enough that it precludes a former employee from, for example, requesting or scheduling, for or on behalf of any other person, a meeting with the individual's former employing Member or a former colleague on official business.²²

In addition to these one-year "cooling-off period" restrictions, departing employees should further be aware of a permanent federal statutory restriction that prohibits any U.S. citizen acting without authority of the United States from:

- Directly or indirectly **commencing or carrying on any correspondence or intercourse with any foreign government**, or any officer or agent thereof, with the intent to influence the measures or conduct of any foreign government or of any officer or agent thereof in relation to any disputes or controversies with the United States, or to defeat the measures of the United States.²³

Permissible Activity

Under Federal statutory law, covered former employees may, immediately upon leaving office:

- **Contact Members, officers and employees of the Senate, and – except for those officials specified above in the section on "Prohibited Activity" – Members, officers and employees of the House and other Legislative Branch offices**, with intent to influence official action so long as not representing a foreign government or political party.

Counsel provides the following illustrative examples: "A high-ranking official who aggressively publicizes the fact that he is leaving an agency to start a one-man consulting firm, then submits a report to the agency shortly thereafter under the name of that firm, almost certainly intends that the report will be attributed to him. Similarly, a former official who is not introduced by name, but participates on a conference call with his former agency colleagues, almost certainly intends this his colleagues will recognize his voice." *Id.*

²¹ *Summary of Post-Employment Restrictions of 18 U.S.C. § 207*, *supra* note 16, at 3.

²² Standards Committee interpretations of the statute that are set out in this memorandum are based on analysis of the statutory terms and purposes, and opinions and guidance issued by the Justice Department and OGE. However, as noted above, 18 U.S.C. § 207 is a criminal statute, and Committee interpretations of it are not binding on the Justice Department (*see also* note 38, below).

²³ 18 U.S.C. § 953 (the Logan Act). An eighteenth century law, the Logan Act restricts private correspondence with foreign governments. This statute, which appears to have been a reaction to the attempts of one citizen to engage in private diplomacy, has never been the basis of a prosecution, and this Committee has publicly questioned its constitutionality. House Comm. on Standards of Official Conduct, *Manual of Offenses and Procedures, Korean Influence Investigation*, 95th Cong., 1st Sess. 18-19 (Comm. Print 1977). Members and staff should be aware, however, that the law remains on the books.

- **Aid or advise clients** (other than foreign governments or foreign political parties) concerning how to lobby Congress, provided the former employee makes no appearance before or communication to those officials specified above in the "Prohibited Activity" section. Such a "background role" would not pose the contemplated risk of improper influence since the current officials would not be aware of the former official's participation.²⁴ Any such participation must remain behind-the-scenes, however: during the one-year "cooling-off" period, former employees must not permit their name to be openly associated with such contact by other persons.²⁵
- **Contact Executive Branch** officials with the intent to influence official action so long as not representing a foreign government or foreign political party.
- **Contact state government officials** with the intent to influence State government actions or decisions. Former employees should comply with any State laws governing such contacts.
- **Contact one foreign government on behalf of another foreign government.**²⁶
- **Contact any Members, officers and employees of the House and other Legislative Branch officials** on official business under any of the following circumstances:
 - The former employee is carrying out official duties on behalf of the **Federal Government;**²⁷

²⁴ As noted in note 6, above, former employees who are lawyers should consult their local bar association concerning the application of rules governing their participation in matters in which they participated personally and substantially as employees of the House, and should also be aware of the prohibitions of 18 U.S.C. § 203 regarding fee sharing.

²⁵ As noted above, the major statutory restrictions set forth in 18 U.S.C. § 207(e) focus on communications and appearances. By contrast, if a former employee plays a background role, and does not appear in person or convey his or her name on any communications, the law does not appear to prohibit that person from advising those who seek official action from the Congress. This construction is consistent with regulations promulgated by the U.S. Office of Government Ethics, interpreting a comparable prohibition that applies to Executive Branch personnel. See 5 C.F.R. § 2637.201(b)(3), (6). This matter is also addressed in the 2001 U.S. Office of Legal Counsel opinion that is cited in note 20 above, including with regard to activities that do not constitute permissible "behind-the-scenes" activities.

²⁶ No Federal statute expressly permits such contacts, but so far as the Committee is aware, no Federal statute prohibits such contacts. Thus, it appears that such contacts are permissible under Federal law. Employees who intend to undertake such activity, however, should carefully review the Foreign Agents Registration Act (22 U.S.C. §§ 611 *et seq.*) to ensure compliance with its requirements. Briefly stated, the Act provides that anyone who acts within the United States under the direction or control of a foreign principal to influence official decisions, official policies, or public opinion on behalf of a foreign principal must register with the Justice Department.

²⁷ 18 U.S.C. § 207(j)(1).

- The former employee is acting as an **elected official or employee** (not as a private consultant or other independent contractor) of a **state or local government**,²⁸
- The former employee is an **employee of an accredited, degree-granting institution of higher education** and is acting on behalf of such institution,²⁹ or
- The former employee is an **employee of a charitable hospital or medical research organization** and is acting on behalf of such hospital or organization.³⁰
- **Represent or give aid or advice to international organizations** of which the United States is a member if the Secretary of State certifies in advance that such activities are in the interest of the United States; otherwise, covered employees must wait one year before engaging in such activities.³¹
- **Make statements based upon the “special knowledge”** of the former employee concerning the particular area that is the subject of the statement, if no compensation is received in connection therewith.³²
- **Give testimony under oath**, or make statements required to be made under penalty of perjury.³³
- **Interact socially with current Members of Congress and staff** *provided that* no appearances or communications are made with the intent to influence, on behalf of any other person, the official actions or decisions of any of the Members or staff specified above in the section on “Prohibited Activity.” Covered former employees may also make **political contributions** to, and sponsor or attend **political fundraisers** for, current Members of Congress, subject to the same provisos.

Example 1. Staff member *A*, who earns more than 75% of a Member’s salary, resigns from her position on Member *B*’s personal staff. She may not lobby *B* or anyone on his staff for one year (except on behalf of an

²⁸ *Id.* § 207(j)(1), (2)(A).

²⁹ *Id.* § 207(j)(2)(B).

³⁰ *Id.*

³¹ *Id.* § 207(j)(3).

³² *Id.* § 207(j)(4).

³³ *Id.* § 207(j)(6).

exempt organization), but may lobby any other Member or staff member on behalf of anyone other than a foreign government or political party as soon as she leaves.

Example 2. Staff member *C*, who earns more than 75% of a Member's salary, resigns from his position on the Ways and Means Committee. He may not lobby any current member or employee of Ways and Means, or any Member who was on that committee during *C*'s last year of congressional service, for any non-exempt person or entity, for one year. He may, however, lobby any other Member or staff member on any issue, except on behalf of a foreign government.

Example 3. Staff member *D*, who earns less than 75% of a Member's salary, resigns from her position on Member *E*'s staff to become a lobbyist. *D* may immediately lobby *E* or any other Member for any client.

Example 4. Staff member *F*, who earns more than 75% of a Member's salary, resigns from Member *G*'s staff to accept a position in an Executive Branch agency. *F* may lobby *G* on behalf of the agency.

Example 5. Staff member *H*, who earns more than 75% of a Member's salary, resigns from his congressional position to join the staff of the Governor of his state. As a state employee, *H* may lobby anyone in Congress, including his former employing Member, on behalf of the state.

Example 6. Staff member *J*, who earns more than 75% of a Member's salary, resigns her congressional position and moves back to her home state. *J* may lobby state government officials on behalf of any clients.

Example 7. Staff member *K*, who earns more than 75% of a Member's salary, resigns his congressional position to become a lobbyist. For the first year after leaving the Hill, *K* lobbies only Executive Branch personnel, and *K* has no foreign clients. *K* is complying with the law.

Example 8. During his one-year "cooling-off" period, former staff member *L* wishes to call his former employing Member to request that she meet with representatives of one of his clients to discuss legislation of interest to the client. *L* would not be present at the meeting. *L* would violate the statute by requesting the meeting, in that the request would be a communication intended to influence official action.

Example 9. During his first year out of office, *M*, who had been a committee staff member paid more than 75% of a Member's salary, wishes to contact a current employee of that committee to urge him to support Federal funding for a non-profit organization operated by a friend of *M*.

The non-profit organization is not a client of *M*, and *M* would receive no compensation for making the contact. *M* would violate the statute by doing so, in that the statute bars such contacts regardless of whether the former official would be compensated for them.

Example 10. During her one-year "cooling-off" period, former staff member *N*, who has become a lobbyist, is asked by her former employing Member about the views of one of her clients on a pending piece of legislation. *N* would violate the statute if she were to state her client's views to the Member, in that there is no exception in the statute for covered communications that are solicited by a current Member or staff person. However, it may be permissible for *N* to refer the Member to one of her colleagues who is not subject to post-employment restrictions.

Summary Table

Entity Contacted by Covered Former Employee

Entity Represented by Covered Former Employee

| | Former Congressional Office/Committee | Executive Branch | Foreign Governments | State Governments |
|--|--|---|-------------------------|--|
| Private Entities | Must wait 1 year before contacting former Cong'l office or cmte directly. May immediately advise entity behind scenes. May contact other Cong'l offices immediately | May contact immediately | May contact immediately | May contact immediately |
| Federal, State, or Local Gov't | May contact all Cong'l offices immediately as employee or elected official of the Federal, state, or local gov't | May contact immediately | May contact immediately | May contact immediately |
| Foreign Government | Must wait 1 year before contacting any Cong'l office or cmte directly or advising foreign gov't behind scenes. Must register with Justice Dep't if acting as a foreign agent in the U.S. | Must wait 1 year before contacting Executive Branch directly or advising foreign gov't behind scenes. Must register with Justice Dep't if acting as a foreign agent in the U.S. | May contact immediately | May contact immediately. Must register with Justice Dep't if acting as a foreign agent in the U.S. |
| International Org of which U.S. a Member | If Sec'y of State approves as in national interests, may immediately advise int'l org and contact Congress directly. Otherwise, must wait 1 year to do either. | If Sec'y of State approves as in national interests, may immediately advise int'l org and contact Executive Branch directly. Otherwise, must wait 1 year to do either. | May contact immediately | May contact immediately |
| Accredited College or University | May contact all Cong'l offices immediately as employee of college or university | May contact immediately | May contact immediately | May contact immediately |
| Charitable Hospital or Medical Research Organization | May contact all Cong'l offices immediately as employee of hospital or med. research org | May contact immediately | May contact immediately | May contact immediately |

Penalties

Each violation of the post-employment restrictions set forth in 18 U.S.C. § 207 is a felony punishable by imprisonment up to one year (or up to five years for willful violations) and a fine of up to \$50,000 for each violation or the value of the compensation

received for the act which violated the restrictions, whichever is greater.³⁴ The statute further authorizes the Attorney General to seek an injunction prohibiting a person from engaging in conduct that violates the act.³⁵

By their terms, the provisions of 18 U.S.C. § 207 summarized above govern the conduct of former Members, officers and employees, and do not apply to the conduct of current Members, officers and employees. However, the post-employment restrictions have been the subject of recent close attention by the United States Department of Justice, as reflected in the guilty pleas by former House staff and others to criminal violations of the statute.³⁶ Therefore, current Members and staff who receive or otherwise participate in improper contacts by a covered former employee should be aware that, depending on the circumstances, they may be subject to criminal or House disciplinary action. The recent examples involving § 207 violations indicate that a Member, House employee, or other individual who aids and abets a covered former employee in the violation may be prosecuted for conspiracy to violate the post-employment restrictions.

Furthermore, in a Standards Committee disciplinary case that was completed in the 106th Congress, a Member admitted to engaging in several forms of conduct that violated the requirement of the House Rules that each Member and staff person “conduct himself at all times in a manner that shall reflect creditably on the House.”³⁷ One of those violations was his engaging in a pattern and practice of knowingly allowing his former chief of staff to appear before and communicate with him in his official capacity during the one-year period following her resignation, “in a manner that created the appearance that his official decisions might have been improperly affected.”³⁸

An employee who has any concerns about the applicability of the post-employment restrictions to his or her proposed conduct should write to the Standards Committee to secure a written advisory opinion. While, as noted above, Committee interpretations of 18 U.S.C. § 207 are not binding on the Justice Department, those interpretations are based on the Committee’s analysis of the terms and purposes of the statute, as well as any applicable

³⁴ 18 U.S.C. § 216.

³⁵ *Id.* § 216(c).

³⁶ See *United States v. Jack A. Abramoff*, Docket No. 06-CR-001 (D.D.C.); *United States v. Tony C. Rudy*, Docket No. 06-CR-082 (D.D.C.); *United States v. Neil G. Volz*, Docket No. 06-CR-119 (D.D.C.). In addition, on September 15, 2006 the Department of Justice filed a plea agreement in which Representative Robert W. Ney pleaded guilty to conspiracy to violate, *inter alia*, the post-employment restrictions for former covered employees.

³⁷ House Rule 23, cl. 1.

³⁸ House Comm. on Standards of Official Conduct, *Summary of Activities, One Hundred Sixth Congress*, H. Rep. 106-1044, 106th Cong., 2d Sess. at 10 (2000).

opinions or guidance of the Justice Department or the U.S. Office of Government Ethics of which the Committee is aware.³⁹

FINANCIAL DISCLOSURE

A departing staff member who has been filing financial disclosure statements by reason of pay level must file a final Financial Disclosure Statement, called a Termination Report, within 30 days of leaving the government payroll.⁴⁰ However, an employee in a Member's office who has filed only because he or she was designated as a principal assistant does not have to file a Termination Report unless the individual was designated "Principal Assistant" to a Member leaving the House. Extensions of up to 90 days are available upon written request. Note that the salary threshold for filing disclosure statements is lower than that which triggers the post-employment restrictions discussed above. For 2006, the financial disclosure filing threshold is an annual salary rate of \$109,808 for 60 days or more.

The termination report, filed on the same form as the annual report, covers all financial activity through one's last day on the payroll. Schedule IX of the report requires disclosure of any agreement entered into by the filer, oral or written, with respect to future employment. Thus, if an employee accepts a position while still on the House payroll, the employee will have to disclose the agreement on the employee's public termination filing. The date of the agreement, the employer, the position or title and the starting date must be disclosed, but the amount of the compensation need not be disclosed. The employee will also have to disclose, on Schedule VII of the report, any travel reimbursements exceeding \$305 received from any source in connection with job-search activity.

However, an employee who immediately accepts another federal position requiring the filing of a *public* financial disclosure statement need not file a termination report.

OUTSIDE EMPLOYMENT AND EARNED INCOME RESTRICTIONS

Departing staff remain subject to all House rules, including the gift rule and the limitations on outside employment and earned income,⁴¹ as long as they remain on the government payroll. These rules are particularly important to bear in mind where an employee's prospective employer suggests that he or she begin work early, including, for

³⁹ It should be noted that one court held that it is a complete defense to a prosecution for conduct assertedly in violation of a related federal criminal strict-liability statute (18 U.S.C. § 208) that the conduct was undertaken in good faith reliance upon erroneous legal advice received from the official's supervising ethics office. *United States v. Hedges*, 912 F.2d 1397, 1404-06 (11th Cir. 1990).

⁴⁰ 5 U.S.C. app. 4, § 101(e).

⁴¹ House Rule 25, cl. 1-4. The outside employment and earned income limitations are also codified at 5 U.S.C. app. 4, §§ 501-502.

example, while still drawing pay for accrued annual leave.⁴² In calendar year 2006, a covered employee may not receive outside earned income (including, for example, a signing bonus) in excess of \$24,780, and no earned income may be received for (1) providing professional services involving a fiduciary relationship, including the practice of law, (2) being employed by an entity that provides such services, or (3) serving as a board member or officer of any organization. Regardless of whether compensation is received, a staff member may not allow his or her name to be used by an organization that provides fiduciary services. In addition, a covered employee may not receive any honorarium (*i.e.*, a payment for a speech, article or appearance), although he or she may receive compensation for teaching, with specific prior permission from this Committee.

Example 11. Staff member O, who earns more than 75% of a Member's salary, plans to join a law firm when he leaves his official position. Since this is a firm providing professional services of a fiduciary nature, O may not commence his new employment until he is off the congressional payroll.

OFFICIALLY CONNECTED TRAVEL FUNDED BY A PRIVATE SOURCE

After *sine die* adjournment, it is questionable whether any employee of a departing Member may participate in any privately funded travel that is factfinding in nature. The gift rule requires that such travel be related to official duties,⁴³ but as of that time, the official responsibilities that may justify participation in such a trip will practically have come to an end. However, this consideration does not limit the ability of an employee of a departing Member to accept travel from a private source for the purpose of enabling the individual to participate substantially in an officially related event, such as to give a speech.

* * *

Any questions on these matters should be directed to the Committee's Office of Advice and Education at extension 5-7103.

⁴² Staff members contemplating future employment with the U.S. Senate, the Architect of the Capitol or any other department or agency of the U.S. Government should bear in mind that federal law prohibits "dual compensation" in excess of an annually-adjusted dollar limit for simultaneous employment by the House and any of those entities. 5 U.S.C. § 5533(c)(1). Thus, in 2006, a departing House employee may not commence employment with the above-named governmental entities while receiving, from the House, payments for accrued annual leave if the employee's aggregated gross annual salaries would exceed \$30,311.

⁴³ House Rule 25, cl. 5(b)(1)(A).